IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 659 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJUBHAI I PATEL & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR.H.N.JOSHI, FOR MR.P.M.THAKKAR for Appellants,
MS.PANDIT, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 30/08/2007

ORAL JUDGMENT

Heard Mr.Joshi, learned Counsel for the appellants and Ms.Pandit, learned A.P.P., for the respondent-State.

2. The appellants has challenged the legality and validity of the judgment and order of conviction and sentence dated 4th June, 1993 passed by the learned Additional Sessions Judge, Vadodara in Sessions Case No.36 of 1990 whereby both the appellants have been charged for the offence punishable under Section 323 of the Indian Penal Code and has been sentenced to undergo simple imprisonment for four months and to pay a fine of Rs.500/-, each in default of making payment of fine to undergo four days imprisonment. The appellant No.2-original accused No.2 has also been convicted for the offence punishable under Section 304 (II) of the Indian Penal Code and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.2000/-, in default of making payment of amount to undergo one month imprisonment.

3. Mr.Joshi, learned Counsel has made submission in detail and same has been responded to by learned A.P.P., for the State. The Court is also taken through the basic facts of the prosecution which is reflected in the charge framed.

3.1 According to Mr.Joshi following aspects are

relevant, while placing the arguments before the Court.

i) That original injured person was succumbed and the widow of the deceased was also expired. Her death certificate is produced for perusal and same is not disputed by the other side.

ii) The original complainant-Bhikhabhai Devrajbhai Rabari who had initiated the criminal action by lodging F.I.R. and being the heir of the deceased, so also, as injured has right to compound the offence and he has compounded the offence with accused No.1, because accused No.1 has been held guilty of the charge of offence punishable under Section 323 of the Indian Penal Code and without seeking any formal permission from the Court, the appellant No.1 can enter into compromise with the original complainant and can pray for acquittal.

iii) The appellant No.2-original accused No.2 does not dispute one crucial fact that there was quarrel and he was the author of the

blow that was given to the deceased so it will not be necessary for the Court to evaluate the evidence and recording the finding to that effect.

3.2 The backbone of the submission of Mr.Joshi is that after admitting all evidence led by prosecution the learned trial Judge ought not to have recorded conviction under Section 304 (II) of the Indian Penal Code and for that he has placed reliance on the depositions of the witnesses examined, mainly the doctor, who has approved the postmortem note (Exh.13).

3.3 Mr.Joshi, has further submitted that accused No.2 ought to have been held guilty of the charge of offence punishable under Section 325 of the Indian Penal Code and therefore submission made by him should be considered.

3.4. Mr.Joshi has also submitted that on perusal of the medical evidence it is clear that deceased had sustained wound injury and the same was appearing as abrasion over forehead ad-measuring 2.5 C.M. above Fronto-Nasal function. No other grievous hurt was

visible on the body of the person of the deceased. He has also pointed out that the doctor who had performed the postmortem was also not sure about the cause of death and therefore he had indicated provisional cause of death in the Certificate (Exh.13). The final cause of death was kept pending till the report of histopathology and chemical analysis report are received. So the injury inflicted on the body of the deceased was not apparently fatal injury. Nasal bone is comparatively soft than the rest part of the skull.

3.5 Mr.Joshi has also placed the reliance on more than one decisions where the Court keeping in mind the medical evidence has decided to convict the accused for lesser offence than the offence punishable under Section 302 or 304 (II) of the Indian Penal Code. But, in the present case it is sufficient to refer one judgment relied on by Mr.Joshi, in case of **Halek And Another Vs. State of M.P., reported in 1998 S.C.C. (Cri) 953.** Of course, in this cited decision, the other side had also sustained injury but keeping in mind the nature of incident and the observation made by the Apex Court, the conviction requires to be altered from 304 (II)

to Section 325 of the Indian Penal Code.

4. Ms.Pandit, learned A.P.P., has submitted that in view of the medical evidence, the Court may convert the conviction from Section 304 (II) to Section 325 of the Indian Penal Code. Because the offence punishable under Section 325 is minor in nature and for that no separate substantive charge was required to be framed considering the scheme of Section 222 of the Code of Criminal Procedure.

5. Having considered the totality and when the fact of offending act has not been challenged by any of the appellants, the present appeal requires to be allowed. The accused No.1 if has compounded with original complainant then obviously he shall have to be acquitted and the accused No.2 should be imposed imprisonment of appropriate period keeping in mind the scheme of Section 325 of the Indian Penal Code. But, according to Mr.Joshi, he has been instructed by the appellants and complainant that they may be permitted to compound the offence in view of the provisions of Section 320 of the Code of Criminal Procedure. The complainant is not a third party. He becomes genuinely aggrieved person and witness

examined before the trail Court. As observed earlier, he is the son of the deceased. If the Court is satisfied with the compromise arrived at between the parties mainly the complainant and the accused and compromise is found genuine and there is no element of undue pressure, this Court should consider the compromise and without passing any order of imposition of sentence can record the acquittal.

6. Mr.Joshi has filed one application being Criminal Misc. Application No.10086 of 2007 under the provisions of Section 320 of the Code of Criminal Procedure seeking permission of this Court to grant the permission to compound the offence with the original complainant alongwith compromise pursis. Both the application, as well as, compromise pursis are signed by Mr.Joshi himself and also by both the accused persons and original complainant-Bhikhabhai Devrajbhai Rabari. Mr.Joshi has identified the original complainant as genuine person being complainant and has attached the Identity Card bearing No.KJR2205607 issued by the Electoral Registration Officer, For 151 Baroda Rural Constituency alongwith the application. The said application is allowed by this Court and parties are

permitted to compound the offence in question.

7. In the result for the reasons recorded hereinabove and the compromise arrived at between the parties by filing application for compounding, the present Criminal Appeal is allowed. The conviction and sentence of appellant No.1-original accused No.1 and appellant No.2-original accused No.2 for the offence punishable under Section 323 of the Indian Penal Code is hereby quashed and set aside and are acquitted from the charges levelled against them.

7.1 Whereas, the conviction and sentence of appellant No.2-original accused No.2 for the offence punishable under Section 304 (II) is hereby altered and converted to Section 325 of the Indian Penal Code. As the original complainant and appellant No.2-original accused No.2 are permitted to compound the offence and compromise arrived at between them has been accepted, appellant No.2-original accused No.2 is hereby acquitted on compounding of the charge of offence punishable under Section 325 of the Indian Penal Code.

7.2 The judgment and order of conviction and

sentence dated 4th June, 1993 passed by the learned Additional Sessions Judge, Vadodara in Sessions Case No.36 of 1990 is thus hereby quashed and set aside. Bail Bond executed by the appellants shall stand discharged. Fine, if paid by the appellants, is ordered to be refunded to them on proper identification. Order and Direction accordingly.

(C.K.BUCH, J.)

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